



Signed and Filed: September 08, 2006

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re) Case No. 06-30568 TEC 7
JAVIER ROMERO,)
and ANA T. ROMERO,) Chapter 7
) O P I N I O N
Debtors.)

THOMAS E. CARLSON, Bankruptcy Judge.

This case turns upon what constitutes "exigent circumstances" permitting a debtor to file for bankruptcy relief before obtaining credit counseling. I determine that such circumstances generally exist where the debtor faces serious and immediate creditor action before the debtor can obtain credit counseling. The wage garnishment faced by Debtors in this case qualifies under this standard.

FACTS

Ana and Javier Romero ("Debtors") filed a chapter 7 bankruptcy petition on July 10, 2006. Concurrently with their petition, Debtors filed a request for a temporary waiver of the prepetition credit counseling requirement (the "Certification"). The Certification states under penalty of perjury that Javier was the

1 sole wage earner for the family, and that he faced imminent
2 garnishment of his wages. Debtors certified that they needed to
3 file bankruptcy immediately, prior to the wage garnishment taking
4 effect, and that they tried to get credit counseling before filing
5 their bankruptcy petition but were unable to do so.

6 On July 13, 2006, the court filed an Order Re Debtors' 109(h)
7 Exigent Circumstances Declaration (the "Order"). The Order gave
8 Debtors until August 9, 2006 to file a sworn declaration as to
9 whether Debtors requested prepetition credit counseling services
10 from an approved agency but were unable to obtain such services
11 during the five-day period beginning on the date of their request.

12 On July 14, 2006, Debtors obtained credit counseling from
13 Money Management International Inc. ("Money Management"), an agency
14 approved to provide such counseling in this district. On July 17,
15 2006, the United States Trustee filed her Motion to Dismiss Under
16 Section 109(h). On the same day, Debtors filed proof of having
17 completed the credit counseling.

18 On July 24, 2006, Debtors filed an additional sworn
19 declaration (the "Supplemental Certification") regarding their
20 prepetition efforts to obtain credit counseling. The Supplemental
21 Certification states that on July 7, 2006, three days prior to the
22 petition date, Debtors telephoned Money Management to obtain the
23 required prepetition counseling services, but that Debtors were
24 unable to obtain the required counseling until July 14, seven days
25 after their request.

26 At the hearing on the Motion to Dismiss, the United States
27 Trustee argued that the Supplemental Certification did not state
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1 exigent circumstances because Debtors would have had adequate prior
2 notice of the wage garnishment.

3 **DISCUSSION**

4 Bankruptcy Code section 109(h)(1) conditions an individual
5 debtor's eligibility for bankruptcy relief on obtaining credit
6 counseling from an approved agency before filing. If a debtor
7 files a bankruptcy petition without obtaining such counseling, the
8 case must be dismissed unless the debtor obtains a temporary or
9 permanent waiver of the credit counseling requirement. See 11
10 U.S.C. § 109(h). To obtain a temporary waiver, the debtor must
11 submit to the court a certification that satisfies the following
12 conditions: (1) it must describe "exigent circumstances" meriting a
13 short-term exemption; (2) it must state that the debtor requested
14 credit counseling services from an approved agency, but was unable
15 to obtain the services during the five-day period beginning on the
16 date the debtor made the request; and (3) it must be satisfactory
17 to the court. 11 U.S.C. § 109(h)(3)(A). The Bankruptcy Code does
18 not define exigent circumstances, and courts have not agreed upon
19 an interpretation.

20 One line of cases concludes that the exigent circumstances
21 standard is a high one that is generally not satisfied when the
22 debtor has sufficient advance knowledge of the threatened creditor
23 action to obtain the credit counseling before the creditor action
24 takes effect. See, e.g., In re DiPinto, 336 B.R. 693 (Bankr. E.D.
25 Pa. 2006) (debtor's imminent loss of home to foreclosure scheduled
26 to occur on petition date not exigent circumstances); In re
27 Anderson, 2006 WL 314539, at *2 (Bankr. N.D. Iowa Feb. 6, 2006)

1 (existing wage garnishment of husband's income plus wife's recent
2 loss of employment not exigent circumstances); In re Rodriguez, 336
3 B.R. 462, 474-76 (Bankr. D. Idaho 2005) (boilerplate allegations re
4 impending third garnishment insufficient); In re Valdez, 335 B.R.
5 801, 803 (Bankr. S.D. Fla. 2005) (filing bankruptcy to prevent
6 foreclosure scheduled two days later not exigent circumstances
7 because foreclosure did not prevent debtor from obtaining
8 counseling).

9 The other line of cases holds that exigent circumstances exist
10 when the debtor is unable to obtain credit counseling within five
11 days of requesting such counseling, and faces immediate creditor
12 action before the credit counseling can be obtained. See, e.g., In
13 re Henderson, 339 B.R. 34, 39 (Bankr. E.D.N.Y. 2006) (impending
14 sale of home or sole means of transportation are examples of
15 potentially exigent circumstances warranting temporary relief)
16 (dictum); In re Hubbard, 333 B.R. 377, 384 (Bankr. S.D. Tex. 2005)
17 (exigent circumstances exist when debtor faces loss of family home
18 or permanent loss of sole means of transportation unless immediate
19 bankruptcy relief granted); In re Childs, 335 B.R. 623, 630-31
20 (Bankr. D. Md. 2005) (imminent sale of property at foreclosure
21 and/or imminent eviction from residence are exigent circumstances).

22 I find the second line of cases more persuasive, and conclude
23 that the threat of serious creditor action before credit counseling
24 can be obtained generally is sufficient to establish exigent
25 circumstances.¹

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27 ¹ Serious creditor action could include foreclosure, eviction,
28 wage garnishment, or repossession of an automobile.

1 Advance knowledge of the threatened creditor action should not
2 preclude a finding of exigent circumstances. The statutory
3 language chosen does not suggest such a limitation. As noted in
4 the Childs decision, requiring the debtor to explain why she or he
5 did not seek credit counseling earlier is more akin to an excusable
6 neglect standard than to an exigent circumstances standard.

7 The standard for exigent circumstances set forth in
8 the statute is minimal. It requires only that the debtor
9 state the existence of some looming event that renders
10 prepetition credit counseling to be infeasible. The
standard is not one of "excusable neglect" that would
require the Court to delve into the reasons why the
exigent circumstances occurred.

11 Childs, supra, 335 B.R. at 630. Nor is such a limitation required
12 by the statutory purpose of credit counseling enunciated by
13 Congress.

14 Most importantly, [section 109(h)] requires debtors
15 to participate in credit counseling programs before
filing for bankruptcy relief (unless special
16 circumstances do not permit such participation). The
legislation's credit counseling provisions are intended
17 to give consumers in financial distress an opportunity to
learn about the consequences of bankruptcy-such as the
18 potentially devastating effect it can have on their
credit rating.

19 H.R. REP. NO. 109-31, pt.1, at 75 (2005). The Committee Report
20 states that this stop-and-think requirement was intended for the
21 benefit of the debtor. A statute with such a purpose should not be
22 read to impose a significant financial loss on a debtor because
23 that debtor did not anticipate that she or he might not be able to
24 get credit counseling within five days of requesting it.

25 It must be remembered that exigent circumstances are relevant
26 only if the debtor has been unable to obtain credit counseling
27 within five days of requesting it. The presence of this five-day
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1 provision in the statute represents a Congressional determination
2 that a debtor's expectation of obtaining counseling within that
3 period is reasonable.

4 In this case, Debtors faced imminent garnishment of their only
5 income. The only way to stop the wage garnishment from taking
6 effect was for Debtors to file bankruptcy by July 10. Debtors
7 requested credit counseling from an approved agency on July 7, but
8 were unable to obtain the requested services until seven days
9 later. I determine that the looming wage garnishment constitutes
10 exigent circumstances permitting a temporary waiver of the credit
11 counseling requirement. Accordingly, the United States Trustee's
12 Motion to Dismiss is denied.